

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.212 of 2006

Decided on: August 7, 2006

Punnu Ram

.....Appellant.

VERSUS

Shakti Chand

.....Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. R.K. Sharma, Advocate.

For the respondent : Mr. B.C. Verma, Advocate.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondent-plaintiff filed a suit for issuance of permanent prohibitory injunction restraining the appellant-defendant from causing any interference in his land, bearing Khasra No.1829, alleging that he was owner in possession thereof. In the alternative, he sued for possession of the said property, in case he was dispossessed during the pendency of the suit.

3. Suit was contested by the appellant-defendant and a plea was raised that the defendant himself was owner in possession. Various issues were framed by the trial Court, based on the pleadings of the parties. On conclusion of the trial, a finding was returned that the plaintiff was owner in possession of the suit land. Consequently, decree of permanent prohibitory injunction restraining

Whether the reporters of the local papers may be allowed to see the judgment?

the appellant-defendant from causing any interference in the suit land was passed.

4. Appellant-defendant went in appeal to the Court of District Judge. In appeal, while affirming the finding of the trial Court that the respondent-plaintiff is the owner of the suit land, it has been held that he (respondent-plaintiff) is out of possession and, therefore, decree for permanent prohibitory injunction has been set aside and instead decree of possession of the suit land has been passed in his (respondent-plaintiff's) favour.

5. The only point that has been urged by the learned counsel for the appellant is that when there was no appeal or cross-objections by the respondent-plaintiff before the first Appellate Court, decree for possession ought not to have been passed and that Order 41 Rule 33 CPC had no application in the matter.

6. The facts, as narrated hereinabove, clearly show that the trial Court accepted the plea of the respondent-plaintiff that he was owner in possession and consequently held him entitled to the relief of permanent prohibitory injunction and granted the decree accordingly. Now, when this plea of the respondent-plaintiff had been accepted and relief of permanent prohibitory injunction had also been granted, where was the occasion for the respondent-plaintiff to have filed any appeal or cross-objections. In the appeal also, the plea of the plaintiff-respondent that he is the owner of the suit land has been upheld by the first Appellate Court. Only the finding with regard to possession has been reversed by the first Appellate Court and the reversal of this finding necessitated the granting of the

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alternative relief of possession claimed by the plaintiff. Various judgments cited by the learned counsel for the appellant in support of his plea that Order 41 Rule 33 CPC was not attracted, do not have any application to the facts of this case and, therefore, the same need not be discussed.

7. No substantial question of law arises. The appeal is, therefore, dismissed.

CMPs No.317 of 2006

Infructuous.

August 7, 2006(sd)

(Surjit Singh, J.)